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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,693	08/17/2001	Koji Matsuo	KOJIM-417	1573

23599 7590 09/22/2005

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EXAMINER

LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/930,693	Applicant(s) MATSUO ET AL.	
	Examiner Carlos Lopez	Art Unit 1731	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-3, 7-13, 15 and 16.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

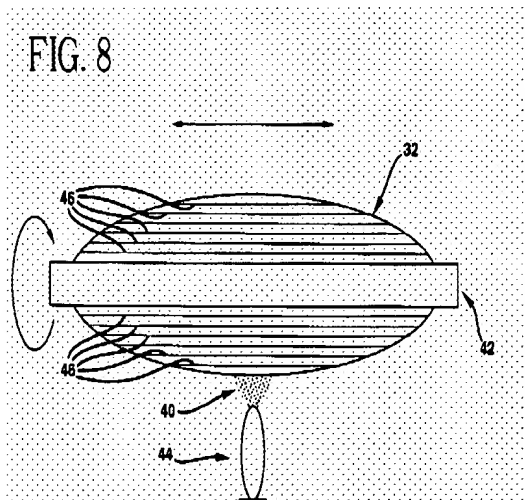

DIONNE A. WALLS
PRIMARY EXAMINER

Response to Arguments

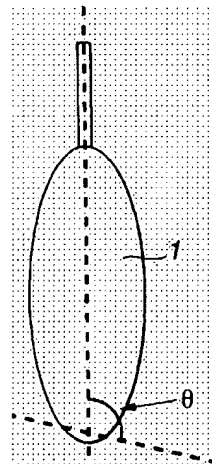
Applicant argues the following:

“Berkey's method obviously results in a hollow tube of silica/glass matrix. While a hollow tube has a cylindrical outer shape, it should be evident that it is not a “cylindrical” porous matrix in the sense that term is used in applicants' disclosure, i.e., a solid cylindrical matrix, and is certainly not a cylindrical matrix having a uniform density. A hollow tube or a cylindrical matrix surrounding a mandrel of some other material (e.g. an alumina mandrel used in Berkey) obviously does not have a uniform density, i.e., the density of the air in the hollow part or the alumina mandrel is clearly not uniform with the density of the porous matrix material.”

Berkey's Matrix :



Applicant's Matrix:



It is obvious to a person of ordinary skill in the art that Berkey's matrix 32 is cylindrical as shown by the above side-by side comparison of Berkey's matrix with Applicant's

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claimed matrix 1. Applicant's disclosure has not explicitly defined the term "cylindrical" to exclude Berkey's alleged hollow tube.

As noted in MPEP 2111.01 R2:

While the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. > In re American Academy of Science Tech Center, ___ F.3d___, 2004 WL 1067528 (Fed. Cir. May 13, 2004)(The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation.).< This means that **the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification.** In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below)**>; Chef America, Inc. v. Lamb-Weston, Inc., 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004) (Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say.

The definition of cylindrical is:

adj 1: having the form of a cylinder or tube [syn: tube-shaped, tubelike, vasiform] 2: related to or having the shape or properties of a cylinder [syn: cylindric]

Thus, not even the dictionary meaning of "cylindrical" would provide applicant with the alleged patentable distinction.

As noted above Applicant further argues "that a hollow tube or a cylindrical matrix surrounding a mandrel of some other material (e.g., an alumina mandrel used in Berkey) obviously does not have a uniform density..." If that is indeed the case with Berkey that the silica matrix surrounds a mandrel hence does not provide uniform density, then it is reasonable to conclude that Applicant's invention which deposits a "cylindrical" silica matrix on mandrel as shown in figure 1 and explicitly described in applicant's disclosure page 8 lines 1-8, also does not provide a uniform density as claimed by applicant. Applicant is seriously undermining his own invention in making the above argument.

In regards to the arguments presented to Deliso, applicant fails to recognize that that Deliso is being cited to show what the art knows about the basic principle of the density of silica and its doping effects. The disclosure of Deliso clearly shows that the degree of doping is directly dependent on the density of silica soot. Hence, in providing a uniform transmission by a photolithography glass blank as done by Berkey, uniform fluorine doping of the blank would be necessary and would be required to have a constant soot density as taught by Deliso.

Applicant is also directed to lino teaching the basic principle that silica soot is easier to dope with fluorine at lower concentration than at higher concentrations. This shows that a blank having varying density would not be uniformly doped and consequently would not have a uniform transmission. Thus in order to achieve a constant transmission by a photolithography glass blank, as desired by Berkey, the photolithography glass blank should have a constant density in order to allow for a

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uniform fluorine doping; A dopant that has direct effect on the transmission of the glass blank.

Applicant also argues that Berkey and Deliso are an OVD process and as such provides a soot having a lower density at the outer surface of the preform. Said argument is not well taken. An OVD process is deposition of silica soot onto a substrate. Like applicant, Berkey deposits silica soot onto substrate 42. The argument that "because it is an OVD process than it can't provide uniform density" is not persuasive. Assuming that the claimed invention is enabling, Applicant's own invention is evidence that an OVD process may form a uniform silica matrix. Applicant's mere allegation without proper reasoned statements and/or evidence showing that due to Deliso or Berkey's OVD method it would provide a non-uniform silica is not persuasive.

Applicant is essentially arguing that Berkey and Deliso are OVD processes and thus can't provide a uniform density, but then applicant's own disclosure shows that despite being an OVD process, it does provide a uniform invention. In conclusion, the allegation that one OVD process does, as shown by applicant's invention, or does not, as done in Berkey and Deliso, provide uniform density without proper reasoned statements and/or evidence is unpersuasive.

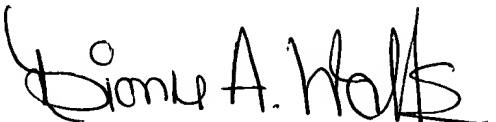
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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